

Central Administrative Tribunal, Mumbai Bench

Original Application No.352 of 1999

Mumbai, this the 25th day of June, 2001

Hon^{ble} Mr. Kuldip Singh, Member (J)
Hon^{ble} Mrs. Shanta Shastry, Member (A)

Shri V.K. Walke
presently working as
Deputy Conservator of Forest
Thane, and residing at
Van Vihar, Kopri Colony
Thane

- Applicant

(By Advocate: Shri S.R. Atre)

Versus

1. The Union of India,
through the Secretary
Ministry of Environment & Forests
Department of Forest and Wild Life
Government of India,
New Delhi
2. The Chairman
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi
3. The Secretary
Department of Personnel &
Administrative Reforms
Government of India
South Block, New Delhi
4. The Chief Secretary
Government of Maharashtra
Mantralaya, Mumbai-400 032
5. The Secretary (Forest)
Revenue & Forest Department
Government of Maharashtra
Mantralaya, Mumbai-400 032

- Respondents

(By Advocates - Shri C.N. Anand for respondents 1-3
and Sh. V.S. Masurkar for respondents 4&5)

O R D E R

By Hon^{ble} Mr. Kuldip Singh, Member (J)

The applicant has filed this OA against the inaction on the part of respondents in considering his case for appointment by promotion to the Indian Forest Service (in short "IFS") the year 1976 in which year he became eligible for being considered for

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appointment by promotion and/or from any subsequent year thereafter. He is also aggrieved of the grant of deemed date of allotment year in the IFS and further promotion to the post of Conservator of Forest.

2. Facts as alleged by the applicant are that he had appeared for the examination conducted by the Maharashtra Public Service Commission for being selected as Assistant Conservator of Forest. After his selection, the applicant was sent for training in 1966 and after completion of his training period, he was regularly posted as Assistant Conservator of Forest. An All India Service known as Indian Forest Service was created w.e.f. 1.10.66 under All India Services Act, 1951. The Union of India also framed rules known as Indian Forest Service (Cadre) Rules, 1966 for the purpose of selection and/or recruitment of various personnel in the said services. It is stated that prior to the creation of the IFS, the State Forest Service was already in existence so it was contemplated under rule 4 of the IFS (Cadre) Rules, 1966 with regard to strength and composition of each of the cadres constituted under Rule 3 and the same was required to be determined by the regulations to be made by the Central Govt. in consultation with the State Government. Accordingly regulations were framed to fix the strength and position of the services at various stages.

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3. Direct recruitment to the various posts in IFS through the Union Public Service Commission (in short 'UPSC') commenced only in the year 1968 and thereafter, it became necessary for the Union of India to start the recruitment in the IFS by way of initial recruitment from amongst the members of the existing Maharashtra Forest Service. The applicant alleges that about 56 officers came to be appointed on probation in the IFS cadre of Maharashtra State w.e.f. 1.10.66. This initial recruitment was recast by the Union of India in the light of judgement of the J&K High Court and, therefore, vide fresh notification dated 13.7.71, 58 officers came to be appointed to the IFS w.e.f. 1.10.66, itself. It is stated that as per Rule 4 of the IFS (Cadre) Rules, the Central Government is required to review and/or alter the composition of anyone of the cadres. Applicant submits that he came to be appointed in Maharashtra Forest Service in the year 1968 and therefore, as per rules after completion of eight years of continuous ~ service, he was eligible for promotion into IFS under IFS (Appointment by Promotion) Regulations of 1966.~

4. Applicant has submitted that because of various litigations pending before various courts, the Maharashtra Government did not grant confirmation to him in the post of Assistant Conservator of Forest. Rather an inquiry was initiated against the applicant which ended in his exoneration. Since the case of the applicant was not being considered for appointment by promotion to the IFS, he filed an O.A. 827/89 before the Tribunal which was decided in his favour vide

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order dated 3.1.92 and respondents were directed to consider the applicant for appointment by promotion to the IFS. In compliance with the Tribunal's directions, the applicant was appointed on promotion in IFS w.e.f. 21.11.88 and in concurrence with the said appointment by promotion, he had also been granted seniority in IFS. However, since the applicant still had a grievance that he was not considered as soon as he became eligible for appointment by promotion and had not been granted proper year of allotment, so he had been making correspondence with the Government of Maharashtra as well as the Union Government.

5. Applicant also points out that he was promoted to Class-I category of State Forest Service w.e.f. 21.7.79 though he was not confirmed as Assistant Conservator of Forest to which post he was initially appointed. So according to the applicant, when he got promotion in Class-I category of State service, there was no necessity and/or objection for his confirmation in the Maharashtra Forest Service. It is submitted that non-confirmation of the applicant in any post could not have come in his way for being considered for appointment by promotion to the IFS on the due date when he became eligible. The applicant further asserts that on 15.11.97 the State Forest Office had issued a seniority list of persons belonging to Maharashtra Forest Service as on 1.1.85 wherein his name appeared at Sr.No.87 below one Shri S.D.Samant and applicant was deemed to have been granted promotion in Class-I cadre w.e.f. 6.11.81 as

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per seniority list at Annexure A-1. The Government of India published the seniority list in 1997 showing the seniority position of the members of IFS as on 1.1.97 wherein the applicant's name appeared at Sr.No.8102 whereas the name of Shri S.D.Samant, immediate senior to him in the Maharashtra State Services appeared at Sr.No.8077 as per Annexure A-2. So a number of persons had come in between Shri Samant and the applicant. Applicant states they are junior to him in State Forest Service. Therefore, it is clear that applicant's name for appointment by promotion to IFS was not considered appropriately either by the Government of Maharashtra and/or the Union of India and it is only because of the fact that the Government of Maharashtra had failed to publish the seniority list of persons belonging to State Forest Service, every year, that the applicant was superseded and/or his name was not appropriately considered by the respondents.

6. Applicant also alleges that as far calculation of the posts to be filled in by appointment by promotion to IFS is concerned, the respondents had initially not taken into consideration the State deputation reserve for calculating such posts and, therefore, one Shri K.K. Goswami with certain others had filed an O.A. before the Jabalpur Bench of the Tribunal which was allowed. The judgement of the Jabalpur Bench of the Tribunal was upheld even at the level of Supreme Court since the SLP preferred by respondents challenging the Tribunal's order, had been dismissed. It is submitted

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that in accordance with the judgement of the CAT, Jabalpur, Government of Maharashtra had carried out re-calculation of posts which became available to the State Forest Service officers for appointment by promotion to the IFS but for reasons best known to the Government, the Government of Maharashtra did not consider those persons who were otherwise similarly situated as the applicant for being inducted into IFS. The applicant alleges that as far his case is concerned, it was only because of the fault on the part of Government of Maharashtra that he was not confirmed at the appropriate time and his case was not considered on the appropriate date i.e. from the year 1976 onwards.

7. Applicant claims that he is entitled to be given ante-dated promotion on the basis of availability of posts and also increase in the cadre strength. He has alleged to have made a representation but the same has not been considered. Therefore, he has prayed that respondents be directed to give him due date in the IFS from the promotee quota from the year 1976 onwards and in any case below his immediate senior namely Shri S.D. Samant.

8. All the respondents are contesting the OA. Respondents 4&5 representing Government of Maharashtra and 1 to 3 have filed their separate reply. Respondents 4&5 in their reply have raised a preliminary objection that the applicant is praying for grant of year of allotment since 1976 and if his prayer is allowed, then so many officers who have

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already been given allotment year and have not been impleaded as respondents, will be affected and therefore, this OA is bad in law for non-joinder of essential parties. It is submitted that the claim for allotment of year 1976 is barred by time. It is denied that there is any inaction on the part of respondents for considering the applicant's case for induction by promotion to IFS since 1976. Rather it is submitted that the applicant was not eligible to be promoted in IFS in 1976 as per IFS (Recruitment) Rules, 1966 and IFS (Appointment by Promotion) Regulations, 1966 as he was not confirmed in State Forest Service in 1976. The moment applicant was confirmed in State Forest Service, he was duly considered but as a D.E. was contemplated against him, he was included provisionally in the Select List by the UPSC. But later on, as per the judgement of the Tribunal, the applicant was promoted to IFS w.e.f. 21.11.88. It is denied that applicant's name was not duly considered when he had become eligible for appointment by promotion to the IFS. It is stated that applicant was not confirmed in State Forest Service for want of substantive vacancies and, therefore, there is no question of considering him for promotion in IFS according to rules.

9. Respondents have also submitted that promotion of the applicant to Class-I category of State Forest Service has no relevance to his promotion in IFS and as soon as he was confirmed in State Forest Service, he was duly considered for being inducted by way of promotion in IFS. It is stated that applicant

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cannot now refer to the case of K.K. Goswami decided by the Jabalpur Bench of the Tribunal and he should have agitated this issue before 1989 when the Recruitment Rules had been amended by the Govt. of India. It is submitted that the Chandigarh Bench of the Tribunal in their judgement dated 14.10.97 in OA-122/HR/96, Vinod Kumar Jhajeria vs. UOI & ors. had taken care of all the grounds raised in the present OA and had noted that "it was made known to all the State Forest Officers serving in different states that the notification of the Govt. of India was explicit not to provide promotion quota more than 33-1/3% of the number of posts shown against Item No.1 and 2 of the Cadre Strength in the schedule. Thus if any member of the State Forests Service had any grievance he ought to have stated provisions within the prescribed period of limitation."

10. Respondents have stated that vide notification dated 31.12.97, the Govt. of India have now amended the IFS (Fixation of Cadre Strength) Regulations, 1996 and refixed the composition of Cadres by which promotional posts of 33-1/3% are now to be calculated on the basis of item Nos.1,2 and 5. These amendments have come into force from 1.1.98 for which the Central Government is duly authorised by Cadre Rules. Though this amendment came into force w.e.f. 1.1.98 but the applicant cannot claim retrospective benefit. It is prayed that OA has no merits and is liable to be dismissed.

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11. Respondents 1 to 3 have also taken the similar stand. They have also relied upon the judgement of the Chandigarh Bench in the case of V.K.Jhajaria. They have stated that selection from the State Forest Service to the IFS is strictly on merits. It is not necessary that seniority of an officer in the SFS shall be maintained in the IFS as well. It is pleaded that once the case of the applicant for promotion to IFS has been settled by the Tribunal in OA-827/89, raising of such issues at this stage is barred by limitation.

12. We have heard learned counsel for the parties and gone through the records.

13. The main plea of the applicant is that since he was not confirmed in State Forest Service as Assistant Conservator of Forests because of the fault on the part of Government of Maharashtra, he could not be inducted into IFS at the appropriate time. Second plea of the applicant is that since cadre revision had not been taken up at the appropriate time in pursuance of the judgement of the CAT, Jabalpur Bench in the case of K.K.Goswami, so he could not have been considered after completion of eight years of service for confirmation in the post of Asstt. Conservator of Forests. Applicant has relied upon Exh.A-4, a letter written by Government of India to Chief Secretary, Govt. of J&K with regard to review of cadre under IFS Seniority Rules as per provisions of Rule 3(2) (a) and 3(2) c of IFS (Regulation and Seniority) Rules, 1968. Learned counsel for the applicant submitted that same

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procedure was not adopted in Maharashtra and had it been followed then probably, much more vacancies would have become available and the applicant could have been inducted into IFS from an earlier date.

14. To our mind, as far fixation of cadre strength is concerned, that prerogative lies solely with the respondents and if a particular State in co-ordination with Govt. of India, had not undertaken the exercise of cadre review and a notification had already been issued in 1989 fixing the promotion quota in the IFS taking into account all the aspects of a service, the applicant should have challenged the same at appropriate time. In any case, the applicant could have challenged the same in O.A.827/89, when he filed earlier OA. But now, in view of the judgement in the case of V.K.Jhajeria decided by the Chandigarh Bench of the C.A.T, the applicant cannot rake up the issue again.

15. As far plea of delay in confirmation is concerned, that plea should have already been taken up by the applicant in his OA-827/89 and consequent to which, he had been granted promotion to the IFS. Respondents have also submitted that confirmation was a must and the applicant was not considered for being appointed to IFS for lack of confirmation in State service and immediately after the judgement in his case, he was duly considered and inducted into IFS.

16. Applicant cannot claim that he should have been inducted into IFS in the year 1976 when he had completed eight years of service. To our mind, the ground of non-confirmation was available to the

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applicant in the earlier OA when he had approached the Tribunal seeking induction into IFS. Now this ground cannot be taken up by the applicant again. And as far cadre review and fixation of promotion quota is concerned, the Chandigarh Bench of the Tribunal has settled the law in the case of V.K.Jhajeria (supra) that "all the State Forest Officers serving in different States were made known that the Notification of the Govt. of India was explicit not to provide promotion quota more than 33-1/3% and if any member of the State Forest Service had any grievance, he ought to have stated provisions within the perescribed period of limitation."

17. In view of the law laid down in the case of V.K.Jhajeria, we are of the considered opinion that the applicant at this stage cannot take up the ground for re-calculating the vacancies and fixation of cadre strength by virtue of the judgement in Goswami's case (supra). So we find that none of the grounds taken up by applicant have any merits and this OA deserves to be dismissed. It is, therefore, dismissed. No costs.

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(Mrs. Shanta Shastri)
Member(A)

Kuldip Singh
(Kuldip Singh)
Member(J)

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